

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 CAPITOL MALL, 17TH FLOOR
SACRAMENTO, CALIFORNIA 95814

INITIAL STATEMENT OF REASONS

File No. RH-01-016450
January 25, 2002

PROCEDURES GOVERNING PERSONS SUBJECT TO TITLE 18 UNITED
STATES CODE SECTIONS 1033 AND 1034

INTRODUCTION

California Insurance Commissioner Harry W. Low, (hereinafter, "Commissioner") proposes the amendment of Title 10, Chapter 5, Subchapter 1, Article 4.5 of the California Code of Regulations (CCR), to include Sections 2175 through 2177, inclusive, concerning the Procedures Governing Persons Subject to Title 18, United States Code Sections 1033 and 1034. The purpose of the proposed amendment is to implement, interpret, and make specific provisions of the California Insurance Code, including but not limited to Section 1742.2, which will establish definitions for critical terms and will set forth procedures governing persons who are subject to Title 18, United States Code Sections 1033 and 1034.

DESCRIPTION OF THE PUBLIC PROBLEM

Title 18, United States Code, Sections 1033 and 1034, ("the Act") as well as California Insurance Code (CIC) Section 1742.2 require the promulgation of regulations implementing the provisions of the Act governing the transaction of, or engaging in, the business of insurance by certain persons who are subject to the Act.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION AND SUBPART

The specific purpose of the adopted sections and the rationale for the determination that each proposed adopted section is reasonably necessary to carry out the purpose for which it is proposed, is set forth below.

Adopted Section 2175.1

Specific Purpose: The specific purpose of the proposed adopted section is to define the purpose of the regulation as the implementation of the provisions of Title 18 United States Code Sections 1033 and 1034, as well as, California Insurance Code Sections 1723 and 1742.2.

Rational for Necessity: This section is reasonably necessary to implement, interpret and make specific that the purpose of these regulations is to set forth procedures governing persons who are otherwise prohibited from engaging in, or transacting the business of insurance.

Adopted Section 2175.2

Specific Purpose: The specific purpose of the proposed adopted section is to provide definitions applicable to these regulations.

Rational for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 by defining the terms used in the regulations.

Adopted Section 2175.3

Specific Purpose: The specific purpose of this adopted section is to identify those individuals who must comply with these regulations.

Rational for Necessity: This section is reasonably necessary to implement, interpret and make specific provisions of the Act and CIC 1742.2 as it specifies that all persons otherwise prohibited from transacting or engaging in the business of insurance are subject to these regulations.

Adopted Section 2175.4

Specific Purpose: The specific purpose of the proposed adopted section is to specify that persons who are currently licensed are also subject to these provisions.

Rational for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that there is no “grandfathering” provision in the Act and therefore, even persons who are currently licensed must apply for Written Consent pursuant to these regulations.

Adopted Section 2175.5

Specific Purpose: The specific purpose of the proposed adopted section is to specify that it is the responsibility of insurers and of any other employer engaging in, or transacting the business of insurance to make a diligent effort to identify Prohibited Persons.

Rational for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it clarifies that employers are ultimately responsible for identifying Prohibited Persons.

Adopted Section 2175.6

Specific Purpose: The specific purpose of the proposed adopted section is to define who must submit an Application for Written Consent and how the Applications are to be completed and submitted to the Department for review.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that in order for the Commissioner to determine when Written Consent should be granted for a Prohibited Person to engage in, or transact, the business of insurance, the Prohibited Person must provide certain information to the Department. This section is necessary to describe what information is required and how the information should be provided to the Department.

Adopted Section 2175.7

Specific Purpose: The specific purpose of the proposed adopted section is to describe what factors are to be considered in granting or denying an Application for Written Consent.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies what information the Commissioner considers relevant to his determination of whether or not Written Consent will be granted.

Adopted Section 2175.8

Specific Purpose: The specific purpose of the proposed adopted section is to specify that Written Consent must be obtained as a prerequisite for licensing.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it puts all Prohibited Persons on notice that Written Consent must be obtained before a license will be issued or renewed.

Adopted Section 2175.9

Specific Purpose: The specific purpose of the proposed adopted section specifies the form for use of the Prohibited Person in submitting information to the Department.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it provides specific information as to the required form that must be used by Prohibited Persons providing information to the Commissioner.

Adopted Section 2175.10

Specific Purpose: The specific purpose of the proposed adopted section is to specify that Prohibited Persons may submit character references in support of their application for Written Consent.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in order to specify how Prohibited Persons are to provide character information to the Department.

Adopted Section 2176.1

Specific Purpose: The specific purpose of the proposed adopted section is to describe the effect that false or misleading statements will have on the Commissioner's consideration of an Application for Written Consent.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 by specifying that the veracity of documents and information is a condition of their acceptance and consideration for Written Consent.

Adopted Section 2176.2

Specific Purpose: The specific purpose of the proposed adopted section is to clarify that Written Consent is effective for specified positions and job responsibilities.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies that if a Prohibited Person takes on a new job or new responsibilities, that the Prohibited Person must apply for a new Written Consent.

Adopted Section 2176.3

Specific Purpose: The specific purpose of the proposed adopted section is to specify that the Commissioner may grant a temporary Written Consent.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies that temporary consent may be granted and that, upon expiration of the temporary consent that a new Written Consent must be obtained.

Adopted Section 2176.4:

Specific Purpose: The specific purpose of the proposed adopted section is to specify the effect of any subsequent convictions on Written Consent.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies that Prohibited Persons shall

notify the Department of any convictions received subsequent to receipt of Written Consent and that any previously granted Written Consent shall be terminated upon subsequent convictions subject to the Act.

Adopted Section 2177.1

Specific Purpose: The specific purpose of the proposed adopted section is to specify the time limit in which a hearing may be requested upon denial of an Application for Written Consent.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies that a hearing may be requested within 60 days of a Prohibited Person's receipt of a notice of denial.

Adopted Section 2177.2

Specific Purpose: The specific purpose of the proposed adopted section is to describe the form of Request for Hearing and the information required in a Request for Hearing.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies how Prohibited Persons are to apply for a hearing on a denial of Written Consent.

Adopted Section 2177.3: The specific purpose of the proposed adopted section is to describe the filing and service requirements for a Request for Hearing.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies how Requests for Hearing are to be provided to the Department.

Adopted Section 2177.4:

Specific Purpose: The specific purpose of the proposed adopted section is to describe the process whereby a time for hearing will be set.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies the time period within which a hearing on a denial of Written Consent will be held.

Adopted Section 2177.5

Specific Purpose: The specific purpose of the proposed adopted section is to describe the circumstances under which a continuance may be granted as well as the procedure for requesting a continuance.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies that continuances will be granted for good cause and the procedure for requesting the continuance of a hearing.

Adopted Section 2177.6

Specific Purpose: The specific purpose of the proposed adopted section is to describe the role of the Department of Insurance in the hearing.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies that the Department represents the Commissioner at the hearing, and specifies that the Department shall notify the Administrative Hearing Bureau of any appropriately filed Request for Hearing within 20 days of the Department's receipt of the request.

Adopted Section 2177.7

Specific Purpose: The specific purpose of the proposed adopted section is to specify that an applicant may be, but need not be, represented at a hearing.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies that a Prohibited Person may, but is not required to, have representation at the hearing.

Adopted Section 2177.8

Specific Purpose: The specific purpose of the proposed adopted section is to describe the authority of the Administrative Law Judge (ALJ).

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies that the ALJ may exercise all of the authority granted pursuant to the Administrative Procedure Act and that the ALJ may issue such orders as are necessary to the discharge of his or her official duties.

Adopted Section 2177.9

Specific Purpose: The specific purpose of the proposed adopted section is to specify that the burden of proof at a hearing is on the applicant.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies that the burden of proof at the hearing is on the Prohibited Person.

Adopted Section 2177.10

Specific Purpose: The specific purpose of the proposed adopted section is to describe the rules of evidence which are applicable to a hearing.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies the evidentiary rules applicable to the hearing.

Adopted Section 2177.11

Specific Purpose: The specific purpose of the proposed adopted section is to specify that the ALJ may require the production of further evidence or briefing on any issue and that no additional evidence will be taken without an order of the ALJ.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies that the ALJ may determine that additional evidence and/or briefing is required.

Adopted Section 2177.12

Specific Purpose: The specific purpose of the proposed adopted section is to describe the circumstances under which Official Notice of any fact may be taken.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies that Official Notice may be taken of any fact that may be judicially noticed by the courts of this state.

Adopted Section 2177.13

Specific Purpose: The specific purpose of the proposed adopted section is to specify that the proceedings at a hearing will be recorded by a hearing reporter and that parties are responsible for making their own arrangements with the reporter to obtain a transcript of the proceedings.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies how parties are to obtain a transcript of the proceedings.

Adopted Section 2177.14

Specific Purpose: The specific purpose of the proposed adopted section is to specify that all parties shall bear their own costs of the hearing.

Rationale for Necessity: This section is reasonably necessary to implement, interpret and make specific the provisions of the Act and CIC 1742.2 in that it specifies that all the parties to the hearing shall bear their own costs.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations as proposed would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by him or that has otherwise been identified and brought to his attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Commissioner invites public comment on alternatives to the regulations.